

SENATE BILL REPORT

SB 5671

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 17, 2009

Title: An act relating to the suitability of annuities sold in Washington.

Brief Description: Requiring annuities sold in Washington to be suitable to the age and financial situation of the purchaser.

Sponsors: Senators Berkey, Franklin, Shin and Haugen; by request of Insurance Commissioner.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/10/09, 2/17/09 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5671 be substituted therefor, and the substitute bill do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin, McDermott, Parlette and Schoesler.

Staff: Philip Brady (786-7460)

Background: The Insurance Commissioner (the commissioner) oversees insurers; insurance producers; insurance solicitors and adjusters; and the market practices of those persons and entities. This includes the sale of fixed and variable annuities.

The Department of Financial Institutions (DFI) regulates sales of most securities, and requires that people selling securities make recommendations that are suitable to the client. Fixed annuities are specifically excluded from DFI's regulation of securities and are not subject to the suitable recommendation requirement. Variable rate annuities are considered securities and are subject to the suitable recommendation requirement.

Summary of Bill (Recommended Substitute): Insurers and producers must comply with a number of requirements in recommending or selling an annuity: they must have reasonable grounds to believe the recommendation is suitable; must make reasonable efforts to obtain relevant information from the client; and must make recommendations that are reasonable in light of all circumstances actually known to the insurer and producer.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Insurers may use a third party to monitor producers' compliance with these requirements if there is some reasonable inquiry by the insurer into the practices of the third party. A senior manager of the third party with a reasonable basis of knowledge must certify compliance with this section. Insurers and producers must retain records for at least five years, including the information used in making recommendations to consumers.

The commissioner may order insurers and producers to take reasonably appropriate corrective action, and penalties may be reduced or eliminated in response to corrective actions.

Compliance with Financial Industry Regulatory Authority (FINRA) suitability rules is considered compliance with this section for annuities registered as securities.

This section doesn't apply to annuities that fund specified retirement plans, deferred compensation arrangements, settlements of personal injury litigation, or prepaid funeral contracts.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): A number of requirements under the original bill are made more flexible. Compliance with FINRA suitability requirements is also considered compliance with this section.

Oversight requirements are added, with the option of using a third party to monitor compliance with the section.

Insurers and producers are not required to provide annuity disclosure forms with clear, written information about the annuities.

Annuities funding certain accounts are not subject to the new section.

Appropriation: None.

Fiscal Note: Requested on February 7, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This is about consumer protection. Annuity products are increasingly complicated, and clients rely on their agents. Clients are typically older persons looking for yearly income, and are often vulnerable. Thirty-nine other states require suitability for annuities, including Oregon and Idaho. Some annuities are already covered under securities suitability requirement, and this would cover the unprotected annuities.

CON: Suitability requirements are good. The model act has an exemption for people who comply with the securities side, but this bill doesn't. It should.

OTHER: Suitability requirements are good, but this is not the model language that has been adopted in 31 states. Complying with the model language would be simpler for sellers of these products.

Persons Testifying: PRO: Drew Bouton, Office of the Insurance Commissioner.

CON: Bill Stauffacher, Securities Industry and Financial Markets Association.

OTHER: Mel Sorensen, American Council of Life Insurers.